

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
APRIL 28, 2003
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Kearsley called the meeting to order at 6:30 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Ed Knight, Interim Planning Manager; Stacey Rice, Senior Planner; Sharyl Beebe, Associate Planner; Julia James, Administrative Services Director; Paul Adams, Parks and Recreation Director; Larry Young, Environmental Health Specialist; and Lisa Pope, City Clerk

FLAG SALUTE

Mayor Kearsley led the Pledge of Allegiance.

CLOSED SESSION REPORT

Public Comment on Closed Session Items

None.

City Attorney Hogin reported that the Council met in closed session at 5:30 p.m. to discuss the following items:

Existing litigation per Government Code Section 54956.9 (a):

1. Cher v. City of Malibu
Los Angeles County Superior Court Case No. SS10632
2. Chicksands Properties LTD. v. City of Malibu et al.
Los Angeles County Superior Court Case No. BS072081
3. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)
Los Angeles County Superior Court Case No. BC230410
4. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)
Los Angeles County Superior Court Case No. SS011355
5. City of Malibu v. California Coastal Commission (AB988 / LCP)
Los Angeles County Superior Court Case No. SC074641

Related cases (city named as a party in interest):

- a. Rick Appel v. California Coastal Commission
Case No. SC074658
- b. Ralph Herzig v. California Coastal Commission
Case No. SS011382
- c. Land Use Preservation v. California Coastal Commission
Case No. SS011388
- d. Riverview Farm Associates v. California Coastal Commission
Case No. SS011383
- e. Brian Sweeney v. California Coastal Commission
Case No. SS011387
- f. Trancas-PCH v. California Coastal Commission
Case No. SC074640
- g. Tuna Ridge v. California Coastal Commission
Case No. SC011381
- h. Land Use Preservation Defense Fund v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011388
6. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)
Ventura County Superior Court Case No. CIV 216938
7. City of Malibu / Geffen v. Access for All / Coastal Commission et al
Los Angeles County Superior Court Case No. BC277034
8. City of Malibu v. Santa Monica Mountains Conservancy (Streisand Center)
Ventura County Superior Court Case No. CIV193900
9. United States of America ex rel. Darian v. Accent Builders inc. et al.
United States District Court Case No. 00-10255-FMC(JWJx)
10. Keach v. City of Malibu
Los Angeles County Superior Court Case No. SS009723
11. Malibu Township Council v. City of Malibu II (28-car garage)
Los Angeles County Superior Court Case No. BS079965
12. Marine Forest Society v. California Coastal Commission Case No. 00AS00567
(Sacramento Superior Court) (Amicus)
13. Rubens v. City of Malibu
Los Angeles County Superior Court Case No. SC060331
14. Silver v. City of Malibu
Los Angeles County Superior Court Case No. BS081960
15. Sprint v. City of Malibu et al
United States District Court Case No. SACV02660 DOC (MLGx)
16. Sweeney et al v. California Coastal Commission (LCP/City is Real Party in Interest)
Los Angeles County Superior Court Case No. SS011387
17. Sweeney et al v. City of Malibu
Los Angeles County Superior Court Case No. SS011602
18. Taxpayers for Livable Communities; Jay Liebig v. City of Malibu
Los Angeles County Superior Court Case No. BC258432
19. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu
Los Angeles County Superior Court Case No. BS0735585

20. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu
Los Angeles County Superior Court Case No. BS072794
21. City of Arcadia, et al. v. Regional Water Quality Board, et al.
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753, BS080758, BS080791
22. Trancas PCH v. City of Malibu
Los Angeles County Superior Court Case No. SC075668

Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):

23. Number of Cases: 2

Real Estate negotiation matters pursuant to Government Code Section 54956.8:

24. Property APN: 4458-021-005 and 4458-022-012
City Negotiator: City Manager Lichtig or designee
Property Negotiator: Tom Fitzpatrick
25. Property APN: 4458-018-002, 018, 019
City Negotiator: City Manager Lichtig or designee
Property Negotiator: Roy E. Crummer
Under Negotiation: Price and terms of payment
26. Property APN: 4458-022-019 and 4458-021-003
City Negotiator: City Manager Lichtig or designee
Property Negotiator: Wave Property Inc.
Under Negotiation: Price and terms of payment
27. Property APN: 4472-027-901 & 902; 4472-028-901 & 902; 4473-005-901 & 902; 4473-006-900
Property Negotiator: City Manager Lichtig or designee
Buyer Negotiator: State of California / Santa Monica Mountains Conservancy
Under Negotiation: Price and terms of payment
28. Property located at: 23801 and 23833 Stuart Ranch Road
City Negotiator: City Manager Lichtig or designee
Property Negotiator: Yamaguchi Tokiye Trust
Under Negotiation: Price and terms of payment

City Attorney Hogin reported that the Council authorized the City Attorney's Office to file an amicus brief in the lawsuit entitled Rain Forest v. California Coastal Commission. She discussed Closed Session Item No. 1, Los Angeles County Superior Court Case No. SS10632. She stated the Council entered into a settlement agreement in that case. She indicated the Council discussed some of the other items on the Closed Session agenda but took no reportable action.

She further indicated that the Council determined to continue the Closed Session agenda to April 30, 2003, 5:30 p.m. and requested a motion to confirm this decision.

MOTION Councilmember Jennings moved and Councilmember Stern seconded a motion to continue the April 28, 2003 Closed Session agenda to April 30, 2003, 5:30 p.m. The motion carried unanimously.

APPROVAL OF AGENDA

Councilmember Jennings suggested moving Item No. 7.B. to the Quarterly City Council meeting on April 30, 2003.

Councilmember House explained that the purpose of the item was to prepare an ordinance regarding prohibition of declawing.

MOTION Councilmember Jennings moved and Mayor Pro Tem Barovsky seconded a motion to continue Item No. 7.B. to April 30, 2003 and approve the remainder of the agenda.

The question was called and the motion failed 2-3, Councilmember House, Councilmember Stern and Mayor Kearsley dissenting.

MOTION Councilmember House moved and Councilmember Stern seconded a motion to approve the agenda. The motion carried unanimously.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was posted on April 18, 2003, with the amended agenda posted on April 25, 2003.

ITEM 1 CEREMONIAL/PRESENTATIONS

A. Proclamation Declaring April 30, 2003 as El Dia de los Ninos

Mayor Kearsley read a proclamation declaring April 30, 2003 as El Dia de los Ninos.

ITEM 2A. PUBLIC COMMENTS

John Mazza, representing the Point Dume Community Association and Malibu Riviera I, discussed traffic concerns and plans on Point Dume. He discussed the Point Dume Neighborhood Traffic Management Plan dated September 4, 2002. He discussed the Public Works Commission action approving the Safe Route to Schools plan. He requested the Council not apply for the grant and further study the plan.

Rebecca McKay, President of Zuma Mesa Property Owners Association, discussed the closure of equestrian trails.

Frank Basso deferred his time to Steve Uhring.

Steve Uhring discussed story poles erected on the Malibu Bay Company's property.

Ozzie Silna addressed the Council regarding the Malibu Bay Company Development Agreement and relation to the Urgent Care Center.

Jo Ruggles, President of Malibu Trails Association, addressed the Council regarding trail closures in Malibu. She urged the Council to ensure trails remain open and the Chute Trail be re-opened.

Mark Gold, Environmental Review Board (ERB) member, discussed the Board's action to inform the Council of the inadequate time to review documents related to the Malibu Bay Company Development Agreement (DA). He urged the Council to allow the ERB to complete its review prior to the Council making any decisions. He explained that the ERB had not yet made a decision on the DA.

Ted Vaill reported on the success of Chumash Day, held on April 27, 2003, at Bluffs Park. He stated it would be a tragic mistake for the State of California to evict the City from Bluffs Park.

B. COUNCIL COMMENTS

In response to Mayor Kearsley, City Manager Lichtig indicated she would provide information to the Council on the closure of trails.

Councilmember Jennings stated the Chute Trail was a deeded easement that could not be blocked off. He discussed the blockage of the School Trail and explained that it was on School property. He requested the City Manager contact Principal Mike Matthews to determine if there was blockage and request it be unblocked. He requested a report from Public Works on the status of realignment of Javid Trail.

In response to Mayor Kearsley, City Manager Lichtig explained that the grant was limited to the Safe Route to Schools grant approved by the Council in 1999. Mayor Kearsley explained that the objective was to provide a safe way for children to get to school.

Councilmember House explained that the Safe Route to Schools program was a grant that would come before the Council.

In response to Mayor Kearsley, City Manager Lichtig discussed the story poles erected on the Malibu Bay Company properties.

Councilmember Stern discussed the story pole requirements and questioned the difference between those erected on the Malibu Bay Company properties and previous single-family homes.

Interim Planning Manager Knight explained the current story pole policy. He explained that story poles were not required on the Malibu Bay Company Trancas residential site because the proposed homes were lower than 18 feet.

Mayor Pro Tem Barovsky stated the Council was not involved in the erection of the story poles. She discussed the success of Chumash Day. She asked when the next ERB meeting would be. Mr. Gold stated a special meeting would be held on May 22, 2003. Mayor Pro Tem Barovsky stated the Council would conduct many hearings on the Malibu Bay Company Development Agreement after May 7, 2003.

Mayor Kearsley asked if the ERB was having trouble obtaining a quorum. Mr. Gold stated the ERB averaged 4 to 5 people per meeting. He explained that the ERB met monthly.

Councilmember Stern stated Chumash Day was great. He asked about an advertisement in the local papers indicating the Parks and Recreation Commission endorsed the Malibu Bay Company DA. He asked if the Parks and Recreation Commission endorsed the entire agreement. He asked the policy on Commissions and Committees taking positions on projects. He requested, if the Parks and Recreation Commission had not endorsed the project, a letter be sent to the Malibu Bay Company indicating such.

Councilmember Jennings stated the Council had nothing to do with the story poles which were installed at the request of the Planning Commission. He assured the ERB that the Council would not take action on the Malibu Bay Company DA until the ERB had completed its review. He asked if the Public Works Commission agenda was properly posted. City Manager Lichtig explained that the meeting notice was properly posted in the required places. Councilmember Jennings requested every effort be made to ensure that all agendas were posted on the website.

Mayor Kearsley congratulated the Native American Cultural Resources Advisory Committee on the success of Chumash Day. He stated he had testified in Sacramento regarding double fines for speeding on Pacific Coast Highway.

In response to Councilmember Stern, City Manager Lichtig stated that at its February 8, 2003 meeting, the Parks and Recreation Commission moved that the City Council and Planning Commission proceed with an agreement consistent with the City of Malibu Master Plan. She indicated the item was properly noticed. She explained that Commissions are intended to be advisory to the City Council and the structure of motion was advisory. She stated the Commission had not endorsed the deal; rather they had only provided an advisory recommendation.

Mayor Pro Tem Barovsky asked if the City Manager was saying the Parks and Recreation Commission did not endorse the DA but rather endorsed the fact that the DA followed the Master Plan. City Manager Lichtig stated there were technical difficulties with the audiotape, but the motion in the approved minutes was that the Commission moved for the City Council and Planning Commission to move forward with the DA because they believed it was consistent with the Parks and Recreation Master Plan.

Mayor Pro Tem Barovsky requested the matter be discussed at the next Parks and Recreation Commission meeting for clarification.

Parks and Recreation Director Adams stated the next Parks and Recreation Commission meeting would be on May 15, 2003 at 6:00 p.m.

Mayor Kearsley authorized Mayor Pro Tem Barovsky to attend the meeting in his place.

ITEM 3 CONSENT CALENDAR

Item No. 3.B.5. was pulled by the public.

MOTION

Mayor Pro Tem Barovsky moved and Councilmember House seconded a motion to approve the Consent Calendar with the exception of Item No. 3.B.5. The motion carried unanimously.

The Consent Calendar consisted of the following items:

- A. Previously Discussed Items
- B. New Items
 - 1. Waive further reading
Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.
 - 2. Approve Warrants
Staff recommendation: To allow and approve warrant demand numbers 21726 through 21851 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 282 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands, including payroll checks, in a total amount of \$746,102.20. ADP payroll voucher numbers 2977861 – 2977871 were issued in the amount of \$96,625.76.
 - 3. Re-affirm the State of Local Emergency Declared by the Director of Emergency Services on January 13, 2003 relating to the Pacific (Trancas area) Fire

Staff recommendation: Re-affirm the State of Local Emergency by minute order.

4. Budget Proposal – 2003 Malibu Beach Team Operation

Staff recommendation: Approve funding for the Malibu Beach Team.

6. Contract with Los Angeles County for Participation in the Community Development Block Grant (CDBG) Program for Fiscal Year 2003-04

Staff recommendation: Approve the contract with the Community Development Commission which will allow the City to participate in the Community Development Block Grant program.

7. Denial of Claim for Damages filed by Julie Randall, Traudel Taylor and William P. Osborn

Staff recommendation: Deny claims filed by Julie Randall, Traudel Taylor and William P. Osborn.

8. Grant Application to the Department of Fish and Game Fisheries Restoration Grant Program for Acquisition of Four Parcels Adjacent to Las Flores Creek Park

Staff recommendation: 1) Adopt Resolution No. 03-19 approving the application for grant funding from the Department of Fish and Game Fisheries Restoration Grant Program for acquisition of four undeveloped parcels from willing sellers for the stabilization and restoration project at Las Flores Creek Park; and 2) appoint the City Manager as agent of the City to conduct all negotiations, execute and submit all documents, including but not limited to applications, agreements, amendments, payment requests and other required actions which may be necessary for the acquisition of four parcels adjacent to Las Flores Creek Park.

9. Request for Proposals (RFP) for Headlands Natural Preserve Shuttle and Extension of Current Contract with Malibu Shuttle

Staff recommendation: Approve the RFP for the Headlands Natural Preserve Shuttle and extend the contract with Malibu Shuttle on a month-to-month basis until a new contract is approved.

The following item was pulled from the Consent Calendar for individual consideration:

5. Amendments to the Consultant Contract for the Preparation of the Final Environmental Impact Report (EIR) for the Malibu Bay Company Development Agreement Project

Staff recommendation: Approve Agreement Amendments in the aggregate amount of \$540,801.30 between Envicom Corporation and the City of Malibu for the preparation of the Final Impact Report for the Malibu Bay Company Development Agreement Project.

Chris Benjamin stated the cost for the EIR consultant was too expensive. He asked if the Malibu Bay Company was paying the expense.

City Manager Lichtig explained the fees paid by youth sports. She discussed the School District's position on fees for youth sports on School District facilities.

Mayor Pro Tem Barovsky clarified that the City of Malibu had a joint use agreement with the School District and the City paid the School District to use some of their facilities, therefore Little League used the City's permit and therefore does not have to pay.

MOTION Councilmember Jennings moved and Councilmember Stern seconded a motion to approve Agreement Amendments in the aggregate amount of \$540,801.30 between Envicom Corporation and the City of Malibu for the preparation of the Final Impact Report for the Malibu Bay Company Development Agreement Project. The motion carried unanimously.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

- A. APPEAL OF THE MALIBU FORGE LODGE BED AND BREAKFAST CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT (EIR SCH #990410009) AND PROJECT APPROVAL - A new 28-unit bed and breakfast inn consisting of seven, four-unit, two-story buildings, a pool, and pool deck and 111 surface parking spaces on a site that is currently developed with a restaurant ("Beaurivage Restaurant"), office, boutique, storage facility and trailers. The existing boutique will be demolished and the on-site trailers and storage facility will be removed. Dave Brown/Sierra Club appealed on several grounds. (CONTINUED FROM MARCH 24, 2003); APPELLANT: Dave Brown/Sierra Club; OWNER: Daniel and Luciana Forge; LOCATION: 26025 Pacific Coast Highway; (Northeast corner of Pacific Coast Highway and Corral Canyon Road); SITE ACREAGE: 4.81 Acres; ZONING: Commercial Visitor Serving (CV-1)

Staff recommendation: Adopt Resolution No. 03-03 certifying the Final EIR; adopting the EIR Mitigation Monitoring and Reporting Program, and conditionally approving the project including Minor Modification to reduce setbacks (MM 02-025); Variances to grade in excess of 1000 cubic yards, construction on slopes greater than 2 ½ to 1 and to build a wall higher than 6 feet (VAR 97-017); Conditional Use Permit for new commercial construction (CUP 96-019); Site Plan Review for height above 18 feet but no greater than 28 feet (SPR 96-064); and Commercial Plot Plan Review for the new Bed and Breakfast Inn (PPC 96-029).

Senior Planner Rice presented the staff report.

In response to Councilmember Stern, Senior Planner Rice explained why the project did not meet the definition of hotel based on the dedicated kitchen facility. She explained that the project was conditioned to not allow expansion of the restaurant hours of operation.

City Attorney Hogin explained the difference between "hotel" and "bed and breakfast." She explained that the restaurant and bed and breakfast were independent of each other.

Paul Shoop, representing the applicant, introduced Lucianna and Daniel Forge. He discussed the hospitality and positive reputation of the Forge's. He discussed the benefits provided by the proposed project.

Mike Barsocchini, architect for the applicant, provided an overview of the previous and currently proposed projects.

Mr. Shoop discussed the economics of the proposed bed and breakfast. He stated the project was not feasible at less than 27 units.

David Brown, representing the Sierra Club, commended the Beau Rivage Restaurant and stated the issue was the proposed project. He stated the project site provided the opportunity to reinstate the running of the steel head trout. He expressed concern with the survival of Solstice Creek. He stated the Sierra Club was not satisfied that the EIR addressed the issue of the Creek. He expressed concern with reduction of the setback. He questioned whether the project scale was compatible with the Creek resources. He questioned the ability of the septic system to accommodate the structure. He stated the Sierra Club had recommended to the Planning Commission that a project setback 100 feet from an ESHA be analyzed, which was not done. He stated the environmental documentation was not adequate. He provided a suggested design modification, reducing the number of units and expanding the parking. He discussed the need for a fuel modification plan.

Steven Kunes was not present at the time of the hearing.

Julie Tumamait-Stenslie discussed the Chumash archaeological remains on the Forge site. She urged the property owners to reconsider the project and consider placing the property on the historical preservation list.

John Mazza discussed parking for the proposed project and indicated additional spaces were needed. He stated there was inadequate turn around on the site.

Theresa Tuchman deferred her time to Michael Tuchman.

Michael Tuchman stated the project would be precedent setting for future developers. He discussed the conditional use permit for a reduced ESHA setback. He discussed the need for a street signal on Pacific Coast Highway at Corral Canyon. He stated the proposed parking was inadequate. He requested the project as proposed be denied.

Jerry Jackson indicated he was initially concerned with the visual impact of the proposed project and had walked the site and driven past the facility, which had alleviated his concerns. He indicated support for the project.

Ray Craig indicated support for the proposed project.

Mary Lou Blackwood, Interim Executive Vice President of the Malibu Chamber of Commerce, stated it is the opinion of the Chamber Board that the proposed project would provide quality overnight accommodations and economic benefit. She indicated support for the project.

Ray Saurajot declined to speak.

Joel Schulman urged the Council to decrease the size of the project. He stated it was not the Council's job to care about the economics of the project. He stated the proposed project should be considered as a hotel.

Jon Christopher Ball did not speak.

Chris Hasselquist discussed National Park Service changes to the Creek. He requested the Sierra Club join the applicant in urging elimination of the NPS requirements.

Richard Neiter discussed the inadequacy of parking and dangerous situations at the subject intersection. He suggested installation of a traffic signal be required prior to approval of the project.

Tom Sissman deferred his time to Marissa Coughlan.

Igar Laminas deferred his time to Marissa Coughlan.

Anna Mariaangelini deferred her time to Marissa Coughlan.

Zohreh Bagnai deferred his time to Marissa Coughlan.

Camellia Bagnai deferred her time to Marissa Coughlan.

Sheila Ckerie Karimi deferred her time to Marissa Coughlan.

Errol Coughlan deferred his time to Marissa Coughlan.

Marissa Coughlan discussed the charitable contributions of the Forges. She discussed the character and quality of the Forges. She urged the Council to reaffirm and support the Planning Commission approval of the Forge Lodge project.

Mario Vitale discussed trash in the stream and clean up by the Forges. He stated the community wants and needs the project.

Robert Loving indicated support for the proposed project. He discussed steel head trout in the stream.

Frank Basso indicated concern regarding public safety at the intersection of Pacific Coast Highway and Corral Canyon. He discussed the need for a traffic signal at the intersection.

Mark Gold, Executive Director of Heal the Bay, expressed concern regarding the location of the project adjacent to Solstice Creek. He stated the project does not comply with the City's ESHA setback requirements. He stated the stormwater management requirements were still unclear. He provided suggested language for the requirements.

Steve Kunes addressed the Council in support of the project. He discussed the traffic situation near the project site.

Mark Ball was not present.

Linda Thornton, on behalf of Taxpayers for Livable Communities, expressed concern regarding the size and mass of the proposed project. She expressed concern regarding the pre-existing underground storage tank. She urged the Council to scale the project back and require complete environmental review.

Efrom Fader deferred his time to Lucille Keller.

Graeme Clifford deferred his time to Lucille Keller.

Lucille Keller, representing the Malibu Township Council, indicated they did not support granting the requested variances. She stated economic viability was not the City's concern. She discussed a study of bed and breakfasts along the Coast and indicated the average size was 7.1 units. She stated the proposed parking was inadequate. She expressed concern regarding the ingress / egress on Pacific Coast Highway. She stated an average size bed and breakfast could be added to the site without the need for variances. She recommended the appeal be upheld.

Jo Fogg discussed the community-mindedness of the Forges. She urged the Council to approve the project.

Robin Senter deferred her time to John Harlow.

Sally Womack deferred her time to John Harlow.

Emily Harlow deferred her time to John Harlow.

Doug O'Brien deferred his time to John Harlow.

Dorothy O'Brien deferred her time to John Harlow.

John Harlow discussed the work being done by the National Park Service at Solstice Canyon Park. He discussed the mitigation measures and conditions of approval for the proposed project. He stated the project would not receive a benefit from installation of a traffic signal at the intersection of Pacific Coast Highway and Corral Canyon.

Dixie Moore addressed the Council in support of the proposed project. She suggested the National Park Service install a traffic signal. She discussed the National Park Service's alteration of the Creek.

Lisa Smith was not present.

Maggie Archileeta requested the Council approve the proposed project.

Jo Ruggles read comments submitted by Sarah Dixon regarding the CV-1 zone and the project as a hotel. She discussed the vision of a bed and breakfast during the General Plan process.

Ted Vaill urged the Council to approve the proposed project.

Bob Purvey was not present.

Stephanie A. Lawrie deferred her time to Frank Laurie.

Dario Cassini deferred her time to Frank Laurie.

Jackie Cassini deferred her time to Frank Laurie.

Frank Laurie read an excerpt from the Declaration of Independence and Constitution of the United States. He discussed the legal rights of the property owner. He indicated support for the proposed project.

Paul Sigelman discussed the need for fine accommodations in Malibu. He indicated support for the proposed project.

Richard Scott encouraged the Council to approve the proposed project.

Ruby Fader stated the proposed project would be built too close to the Creek. She stated the project was too big for such an important ecological site. She urged the Council to oppose the project.

Paul Grisanti explained that the Council could not decide to install a traffic signal at Pacific Coast Highway and Corral Canyon. He discussed National Park Service destruction of Solstice Canyon Park. He urged the Council to approve the project.

William McCarthy discussed light glare emitting from the Beau Rivage Restaurant and questioned how proactive the Forges would be in protecting the environment. He indicated the proposed project was too large.

Ros Norea indicated support for the project.

David Markoff discussed the benefits of the proposed project.

Ray Sauvajot, Chief of Planning Science, National Park Service, expressed concern that the project was too dense and too close to the Creek. He stated the NPS recommends the Council not certify the EIR until it contains a low intensity alternative.

Lisa Smith questioned the National Park parking lot adjacent to the Creek. She indicated support for the proposed project.

Christopher Ball discussed the portion of the stream that runs through the Forge property. He indicated support for the proposed project.

Paul Almond deferred his time to Patt Healy.

Patt Healy stated CEQA requirements had not been met in the Final EIR. She discussed items which she alleged were not analyzed in the EIR. She stated the necessary findings could not be made to approve the project.

City Attorney Hogin admonished the Council to not discuss the project during the break.

RECESS Mayor Kearsley called a recess at 9:47 p.m. The meeting reconvened at 9:58 p.m. with all Councilmembers present.

Mike Barsocchini requested the Council ask the preparers of the EIR to address ESHA, traffic and studies done as part of the EIR preparation. He asked for the Council to receive the same presentation made to the Planning Commission and ERB.

Paul Shoop stated there was no evidence presented that needed to be rebutted. He stated the National Park Service was not properly conducting business within the City. He requested Condition 3G be amended to drop out Federal and State

agencies and make the City of Malibu responsible for what happens inside the City.

David Brown, appellant, discussed removal of barriers to steel head trout in Solstice Canyon Park. He stated the size of the project was too big. He discussed the need for restoration of steel head spawning areas. He discussed the need for 100-foot setback from ESHA.

Councilmember Jennings expressed concern regarding issues raised in letters presented by the Santa Monica Mountains Conservancy regarding location of grading. Mr. Barsocchini explained the dedicated easement and stated no grading would take place within the conservation easement.

Councilmember Jennings discussed proposed modifications to the mitigation monitoring reporting program raised by Mr. Brown, including design of the trail.

Shane Parker, CAJA EIR preparer, explained the conservation easement and trail easement requirements. He explained that the Santa Monica Mountains Conservancy was the agency responsible for designing the trail.

In response to Councilmember Jennings, Mr. Barsocchini explained the proposed trail construction by the Santa Monica Mountains Conservancy. He stated the Conservancy would install the trail.

Councilmember Jennings discussed the Conservancy's request that a condition be imposed requiring the Forges to pay for a trail. Senior Planner Rice stated the Coastal Development Permit did not indicate who would pay for trail construction.

Councilmember Jennings explained that the swimming pool would not utilize chlorine which alleviated the previous concerns of Mr. Brown. Mr. Barsocchini stated he provided staff with wording utilized by the Coastal Commission for swimming pools. Environmental Health Specialist Young stated the swimming pool water could not be discharged through the waste disposal system. Councilmember Jennings stated the approval could be conditioned to ensure that the swimming pool could not be discharged offsite. Senior Planner Rice indicated Condition 5j dealt with swimming pool discharge.

Mr. Brown stated it was necessary to retain a condition that chlorinated water not be dumped into Solstice Creek.

In response to Councilmember Jennings, Environmental Health Specialist Young described the proposed septic systems. He stated infiltration into the Creek would not occur.

In response to Mayor Kearsley, Environmental Health Specialist Young explained the septic system monitoring.

Councilmember Jennings discussed the EIR section entitled Alternatives Considered but Dismissed, specifically a project outside the 100-foot ESHA setback. Mr. Parker reiterated the information presented.

In response to Councilmember House, Mr. Parker explained proposed storm water management for the project.

Councilmember House asked whether the area was a disturbed resource area rather than an ESHA. Sam Reed stated the portion of the property identified as ESHA was the Creek itself. He stated their conclusion is that the site is a 3 on a scale of 1-10, 10 being of pristine condition. He explained the method for determining the condition of the ESHA. He stated the site is remarkably disturbed.

Councilmember House asked what scientific evidence was available supporting establishment of a 100-foot setback from ESHA. Mr. Reed stated there was none. He stated there was a general rule that bigger is better and farther is better but no scientific evidence. He discussed the current impacts on the environment based on the surrounding roads.

In response to Councilmember House, Mr. Parker discussed evaluations of archeology in the DEIR. He stated it was concluded that disruption occurred in the 1930's during construction of Pacific Coast Highway. He indicated a Phase 2 archeological study would occur prior to construction.

In response to Mayor Kearsley, Mr. Parker indicated LAN 210 maps were reviewed.

Councilmember Jennings stated parking would be a problem on the site. He asked what type of analysis was conducted for impacts on traffic when a large event was held at the restaurant. Mr. Parker explained that the parking analysis was based on the Code requirements. Councilmember Jennings asked if valet parking would be provided on the site. Mr. Barsocchini stated valet parking could be provided for special events. He stated valet parking currently existed for weekends and holidays. Councilmember Jennings asked the requirements imposed on the restaurant for special events. He stated he wanted to maintain control over large events at the restaurant. City Attorney Hogin stated the restaurant was not before the Council. She stated dedicated parking spaces could be required for the bed and breakfast. Mr. Barsocchini stated the applicant would accept a condition requiring valet parking when special events were held at the restaurant. City Attorney Hogin explained that such a condition could not be imposed because the restaurant was not before the Council.

Councilmember Jennings asked about an exit onto Corral Canyon. Mr. Barsocchini explained the proposed emergency exit onto Corral Canyon Road. He explained that the City's traffic engineer recommended one ingress and egress.

Councilmember Stern asked if special events could be considered in the parking analysis. Mr. Parker discussed the existing condition on the restaurant for parking. He stated a condition could be imposed for special events.

Councilmember Jennings asked where cars were valet parked for the restaurant. Daniel Forge explained that cars were not parked on Pacific Coast Highway, rather maintained on site. He stated over 100 cars could be parked on site.

Mayor Pro Tem Barovsky stated denial of the variance eliminated the National Park Service's easement and parking spaces. Mr. Sauvajot stated the vehicle issue was a Santa Monica Mountains Conservancy issue. He stated no access to the stream was better for the stream. Mr. Brown stated the stream would restore itself if left alone.

Mayor Pro Tem Barovsky asked if a Phase 2 archeology report would be conducted prior to construction. Mr. Parker stated that was correct.

Mayor Pro Tem Barovsky asked why the City would grant a conditional use permit and if similar projects would require a conditional use permit. City Attorney Hogin stated that was correct.

Mayor Pro Tem Barovsky discussed the previously approved Adamson Hotel. City Attorney Hogin discussed off-site mitigation for the Adamson project.

Mayor Kearsley asked why 100-foot setback from the ESHA was proposed. Mr. Sauvajot explained that more is better. He stated the concern is that the closer you are, the higher the probability of impacts. He stated there are a number of studies that indicate proximity can impact habitat. He described photographs depicting work at Solstice Creek Park. Mayor Kearsley stated the education center in the park was developed right on the Creek yet the Forges were being required to maintain 100-foot setback. Mr. Sauvajot stated NPS was concerned with impacts based on use at the bed and breakfast. Mayor Kearsley questioned the concerns regarding noise. Mr. Sauvajot stated noise and light could be a problem. He stated comments of the NPS had not specifically addressed light and noise.

Councilmember Jennings disclosed that he had a telephone conversation with the attorney representing Daniel Forge regarding procedural matters. He stated he had dinner at Beau Rivage but did not talk about the merits of case with Mr. Forge.

Mayor Pro Tem Barovsky disclosed that she visited the site with Mayor Kearsley. She stated Ms. Healy delivered documentation to her home for a previous hearing. She stated she ran into Mr. Forge at the gym but did not discuss project.

Councilmember Jennings added that he visited the site, walked around, observed numerous storage containers and metal buildings, walked along stream, observed debris in the stream, including discarded equipment, old fencing and significant evidence of the site having been graded and regarded.

Mayor Kearsley stated she visited the site with Mayor Pro Tem Barovsky and visited another time by himself and took pictures, observed a homeless person doing laundry in the stream, talked to Patt Healy about 50 versus 100-foot setback, and discussed the General Plan.

Councilmember House stated she had received Ms. Healy's proposed design, talked to Mr. Barsocchini on the telephone and expressed concern about the previous gas station on the site.

Councilmember Stern disclosed that he received calls from Patt Healy and Mike Barsocchini but refused to talk with them.

Councilmember House stated Patt Healy left messages on her machine indicating she would deliver a packet to her house and both times she was out for the weekend. She stated she did not recall talking with anyone else.

Councilmember Jennings stated Steel Head Trout restoration was important but the Creek and surrounding area was not a pristine area. He stated the project would provide the opportunity to restore Creek. He discussed the provisions regarding ESHA setback. He explained that, in considering the minor modification, the Council had to consider potential impacts. He stated the project was an appropriate case for granting a minor modification. He discussed proposed grading for the project. He stated he was not pleased with Mr. Shoop's proposed language for the condition on the tanks. He suggested a condition requiring study if the tanks appear.

Councilmember House concurred with the comments made by Councilmember Jennings. She discussed the impacts of requiring 100-foot setback from the ESHA. She suggested deleting the requirement of 17 parking spaces for the Santa Monica Mountains Conservancy for use by public visitors to Solstice Canyon Park. She discussed the dedicated open space provided by the project.

Councilmember Stern discussed the distinction between a hotel and bed and breakfast. He indicated support for the proposed parking. He expressed concern that the appellant had said he hoped that serious negotiations would take place.

He indicated support for a traffic signal but that decision was up to Caltrans. He expressed concern regarding the size of the rooms.

Mayor Kearsley stated it was necessary to make a finding that the Council has followed relevant State codes. He stated he felt the project could be moved back further. He requested conditions prohibiting outdoor amplification and outdoor lighting on the Creek side, requiring radar subsurface examination or gas VOC testing to determine the location of tanks, moving the project back further from the ESHA, and reducing each room by 200 square feet.

Mayor Pro Tem Barovsky expressed concern with bulk of the 7 buildings and indicated the size of the rooms seem too large. She indicated support for reducing the size of the rooms.

Councilmember Jennings stated the Council was discussing areas outside its purview. He stated bulk was irrelevant. He stated it was not the Council's job to design the project. He stated he would not support Mayor Kearsley's recommendations.

Mayor Pro Tem Barovsky stated there was an issue of the size of the project. She stated a slightly scaled down project would address a lot of the concerns of appellant. She stated a scaled back project would address environmental concerns.

Councilmember House stated 680 square feet per room was appropriate.

Mayor Kearsley stated the project could be moved further away from the ESHA if by reducing the square footage.

MOTION Mayor Kearsley moved and Mayor Pro Tem Barovsky seconded a motion to amend Resolution No. 03-03 to reduce the square footage of each room to 480 square feet, plus a 480 square foot kitchen, totaling 13,440 square feet. The question was called and motion carried, Councilmember Jennings and Councilmember House dissenting.

MOTION Mayor Kearsley moved and Mayor Pro Tem Barovsky seconded a motion to add conditions prohibiting outdoor amplification, outdoor lights on the Creek side, requiring gas or radar testing be conducted, removing condition that requires 17 parking spaces, swimming pool requirement and the project be limited to 13440 square feet.

AMENDMENT

Mayor Kearsley moved to add language provided by Heal the Bay related to storm water management. Mayor Pro Tem Barovsky seconded.

The question was called and the motion carried, Councilmember Jennings and Councilmember House dissenting.

MOTION Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to reconsider the previous motion reducing the square footage. The question was called and the motion carried 4-1, Mayor Kearsley dissenting.

MOTION Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to amend the previous motion to adopt Resolution No. 03-03 to change the square footage to 580 per room, including the kitchen, totaling 16,240 square feet. The question was called and the motion carried 4-1, Mayor Kearsley dissenting.

RECESS Mayor Kearsley called a recess at 12:00 a.m. The meeting reconvened at 12:03 a.m. with all Councilmembers present.

MOTION Mayor Pro Tem Barovsky moved and Councilmember House seconded a motion to suspend the Council's rules to take up new items. The motion carried unanimously.

- B. Tentative Parcel Map No. 00-002, Variance No. 00-023, and Negative Declaration No. 00-011 – An application for a Variance request to allow parcel sizes smaller than the minimum size required by the slope/density factor of the Subdivision Ordinance in order to subdivide one 5.95-acre parcel, located at 27525 Winding Way, into two parcels; and Tentative Parcel Map No. 02-002, and Negative Declaration No. 00-011 – An application for the subdivision of one 5.9-acre parcel, located at 27525 Winding Way into two parcels - APPLICANT: Kurt Beckmeyer; OWNER: Stacy Keach; LOCATION: 27525 Winding Way; SITE ACREAGE: 5.95 Acres; ZONING: Rural Residential (RR-2)
Staff recommendation: 1) Adopt Resolution No. 03-16, a resolution of the City Council of the City of Malibu, vacating City Council Resolution No. 00-070 (A and B) and denying Variance No. 00-023; and 2) Adopt Resolution No. 03-17, a resolution of the City Council of the City of Malibu approving Tentative Parcel Map No. 02-002 and Negative Declaration No. 00-011.

Associate Planner Beebe presented the staff report.

Paul Shoop, representing Blanc Par E, discussed cooperation of the Keach's. He stated Blanc Par E supports the application.

David L. Jensen, representing Alice Keel, stated his client does not know whether to oppose because there is no proposed project. He asked the setback for residential structures and/or stables, and additional structures. He questioned the developable envelope and whether outbuildings were allowed.

Angela Sousa, attorney representing Stacey Keach, stated they did not intend to waive any rights. She objected, on the record, to the dual capacity of Ms. Hogin.

Kurt Beckmeyer, architect for Mr. Keach, discussed the variance findings on page 3 and 4 of the staff report. He stated the correct slope density calculation should be 1.70.

Angela Sousa discussed objections to the proposed conditions.

Mayor Kearsley stated there was no project before the Council therefore Mr. Jensen's questions could not be responded to. City Attorney Hogin explained that the project before the Council was for division of one lot to two. She stated the same standards would apply to both lots.

Mr. Jensen stated he was more concerned with potential visual impacts and odor from horses.

City Attorney Hogin discussed calculations of Quimby fees. She discussed the Beverly Hills decision and allegations about dual roles. She suggested adding the following sentence to Resolution No. 03-18, if the Council decided to maintain Condition 8:

"This condition shall not apply to litigation previously filed by the applicant including Los Angeles Superior Court Case No. SS009723."

MOTION Councilmember Jennings moved and Councilmember Stern seconded a motion to adopt Resolution 03-16, a resolution of the City Council of the City of Malibu, vacating City Council Resolution No. 00-070 (A and B) and denying Variance No. 00-023. The question was called and the motion carried unanimously.

MOTION Councilmember House moved and Councilmember Jennings seconded a motion to adopt Resolution No. 03-18, approving an exemption from the Slope Density Formula of the Subdivision Ordinance, Tentative Parcel Map No. 02-002 and Negative Declaration No. 00-011, adding the sentence suggested by City Attorney Hogin. The question was called and the motion carried unanimously.

MOTION Councilmember House moved and Councilmember Jennings seconded a motion to refer Resolution No. 03-17, a resolution of the City Council of the City of Malibu approving Tentative Parcel Map No. 02-002 and Negative Declaration No. 00-011, to staff to make the appropriate findings. The motion carried unanimously.

MOTION Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to suspend Council's rules to take a new item. The motion carried unanimously.

C. Ordinance No. 247, an Ordinance of the City of Malibu Amending Section 9.04.020 of the Malibu Municipal Code (M.M.C.) (Drinking in Public Prohibited)

Staff recommendation: 1) After the City Attorney reads the title of the Ordinance, introduce on first reading Ordinance No. 247, amending M.M.C. Section 9.04.020, Drinking in Public Prohibited; and 2) Direct staff to schedule second reading and adoption of Ordinance No. 247 on May 12, 2003.

MOTION Councilmember Jennings moved and Councilmember Stern seconded a motion to introduce on first reading Ordinance No. 247, amending M.M.C. Section 9.04.020, Drinking in Public Prohibited as amended and direct staff to schedule second reading and adoption of Ordinance No. 247 on May 12, 2003. The motion carried unanimously.

ITEM 5 OLD BUSINESS

None.

ITEM 6 NEW BUSINESS

None.

ITEM 7 COUNCIL ITEMS

- A. Recognition of Los Angeles County District Attorney Steve Cooley (Mayor Kearsley)
Staff Recommendation: Direct staff to present a City tile to Los Angeles County District Attorney Cooley.

By acclamation, the Council continued this item to May 12, 2003.

- B. Consideration of Direction to Staff to Prepare an Ordinance banning Onychectomy (Declawing) and Flexor Tendonectomy Procedures within the City (Councilmember House)

Staff Recommendation: Direct staff as deemed appropriate.

- a. If the Council determines that a ban on declawing is necessary within the City of Malibu, direct staff to prepare an ordinance for introduction and first reading at a future City Council meeting: OR
- b. If the Council determines to not adopt an ordinance banning declawing, take no action.

By acclamation, the Council continued this item to May 12, 2003.

- C. AB 947: An Act to Amend Section 36201 of, and to Add Chapter 6.5 (Commencing with Section 36550) to Division 27 of, the Public Resources Code, Relating to Natural Resources (Mayor Kearsley)

Staff Recommendation: Direct staff to monitor activities related to AB 947, testify as appropriate and continue to communicate the City's opposition to the passage of AB 947.

By acclamation, the Council continued this item to May 12, 2003.

ADJOURN At 12:35 a.m., Councilmember Jennings moved and Councilmember Stern seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of the City of Malibu
on September 11, 2003.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)